85-1788

Supreme Court, U.S.
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JOSEPH F. SPANIOL, JR.
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No.

IN THE

Supreme Court Of The United States

October Term, 1985

JIM B. McCLENDON and NANCY P. McCLENDON,
Petitioners,

v.

SHELBY COUNTY, ALABAMA, A Political Subdivision of the State of Alabama; The COUNTY COMMISSION OF SHELBY COUNTY, ALABAMA; the PLANNING COMMISSION OF SHELBY COUNTY, ALABAMA, A Body Corporate and Political Subdivision of the State of Alabama; and SCOTCH BUILDING AND DEVELOPMENT COMPANY, a Corporation Organized and Existing Under the Laws of the State of Alabama,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ALABAMA

DOUGLAS CORRETTI
(Counsel of Record)
CORRETTI & NEWSOM
1804 7th Avenue No.
Birmingham, AL 35203
(205) 251-1164

Attorneys for Petitioners

QUESTION PRESENTED

Whether the enabling legislation creating a local planning and zoning commission violates the equal protection clause of the Fourteenth Amendment where it requires that a person be a "freeholder" in order to qualify for appointment to the commission.

LIST OF PARTIES

The following were parties to this proceeding in The Supreme Court of Alabama: Jim B. McClendon; Nancy P. McClendon; Shelby County, Alabama, a Political Subdivision of the State of Alabama; the County Commission of Shelby County, Alabama; the Planning Commission of Shelby County, Alabama, a Body Corporate and Political Subdivision of the State of Alabama; and Scotch Building and Development Company, a corporation organized and existing under the laws of the State of Alabama.

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No.

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JIM B. McCLENDON and NANCY P. McCLENDON,
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SHELBY COUNTY, ALABAMA, A Political Subdivision of the State of Alabama; The COUNTY COMMISSION OF SHELBY COUNTY, ALABAMA; the PLANNING COMMISSION OF SHELBY COUNTY, ALABAMA, A Body Corporate and Political Subdivision of the State of Alabama; and SCOTCH BUILDING AND DEVELOPMENT COMPANY, a Corporation Organized and Existing Under the Laws of the State of Alabama,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ALABAMA

Jim B. McClendon and Nancy P. McClendon (Petitioners) respectfully petition this Court for a Writ of Certiorari to review the Judgment and Decision of the Supreme Court of Alabama rendered on January 31, 1986, denying Petitioners' petition for Writ of Certiorari to the Court of Civil Appeals of Alabama.

OPINIONS BELOW

The decision of the circuit court of Shelby County, Alabama, is reprinted in the Appendix hereto as Appendix B. Petitioners

timely appealed this decision, and, on September 11, 1985, the Court of Civil Appeals of Alabama issued its opinion, which is reprinted in the Appendix as Appendix C. Rehearing was timely requested by Petitioners, and after denial of such, Petitioners applied to the Supreme Court of Alabama for a Writ of Certiorari. This application was denied on January 31, 1986, and a copy of the denial is reprinted as Appendix A.

JURISDICTION

This Court has jurisdiction to review the decision of the Court below under 28 U.S.C. § 1257 in that Petitioners allege that the state legislative enactment is repugnant to the Federal Constitution.

CONSTITUTIONAL PROVISIONS AND STATUTES

The pertinent portions of the state enabling legislation creating the Shelby County Planning Commission (1982 Ala. Acts No. 693 as amended by 1984 Ala. Acts No. 454) and the Fourteenth Amendment to the United States Constitution are reprinted at Appendix D.

STATEMENT OF THE CASE

A. Legislative History

The Shelby County Planning Commission was originally organized in 1965 prior to, and perhaps in anticipation of, the urban development of Shelby County, Alabama. 1965 Ala. Acts No. 816. The enabling legislation under which the Shelby County Planning Commission was originally formed was held to be invalid under state law in the case of *Adam v. Shelby County Commission,* 415 So. 2d 1066 (Ala. 1982). In direct response to the decision in *Adam v. Shelby County Commission,* id., the legislature of the State of Alabama enacted the present enabling legislation. 1982 Ala. Acts No. 693. After the present action was filed, legislation was introduced to amend the 1982 legislation. 1984 Ala. Acts No. 454.

The freeholder qualification appeared in the 1965 legislation and has been carried forward in all of the subsequent legislation relating to the Shelby County Planning Commission.

B. Procedural Overview

Petitioners brought this action in the Circuit Court of Shelby County, Alabama, alleging, in their complaint as amended, inter alia, violations of 42 U.S.C. § 1983 and that the enabling legislation creating the Shelby County Planning Commission was constitutionally infirm in that it violated the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and pertinent provisions of the Constitution of Alabama of 1901.

The state trial court denied all relief requested by Petitioners by judgment entered on September 6, 1984.

On appeal, the Court of Civil Appeals of Alabama affirmed the judgment of the trial court holding that it was rational for the legislature to conclude that "freeholders" are the persons best qualified to make land planning decisions. The Supreme Court of Alabama denied Petitioners' Application for a Writ of Certiorari to the Court of Civil Appeals of Alabama, but refused to approve the reasoning applied by the Court of Civil Appeals to Petitioners' constitutional arguments.

C. State Court Appellate Decisions

The Court of Civil Appeals of Alabama held, as a factual matter, that the configuration in question on the plat attacked in Petitioners' complaint was not a cul-de-sac. The court continued its opinion and addressed the Petitioners' equal protection attack on the enabling legislation. The Court of Civil Appeals explicitly determined that a rational relationship test should be applied to the "freeholder" qualification and that a rational basis did, in fact, exist for the qualification.

The Alabama Supreme Court denied Petitioners' request for Writ of Certiorari, but stated that it should not be understood

as approving the language, reasoning, or conclusions of law of the Court of Civil Appeals.

REASONS FOR GRANTING THE WRIT

The court below held valid a legislative act applicable only to Shelby County, Alabama, against Petitioners' claim that the act is invalid in that the act operatively denies equal protection of the law where it requires a person to be a "freeholder" in order to be eligible for appointment to the Shelby County Planning Commission.

A freeholder qualification has been recognized as racially discriminatory under state court decisions and the decisions of this Court.

Under the decisions of the Alabama supreme court, a person who rents real property is not a freeholder; one must be the owner of a freehold estate in real property. *Iverson v. State,* 52 Ala. 170 (1875). In *Iverson,* id., it was held that a trial court erred in failing to disqualify a juror who had rented land where the juror qualification statute required a potential juror to be a freeholder.

This juror qualification statute has recently been addressed by the Alabama Supreme Court in *Wilder v. DiPiazza,* 481 So. 2d 1091 (Ala. 1985), where it was said:

> In other words, the "resident householder or freeholder" ground for challenge is viable notwithstanding the juror's qualification as a "resident of the county for more than 12 months." Thus, if a prospective juror is qualified under the 12-month requisite of § 12-16-60(a)(1), he or she may yet be subject to challenge for cause for not having been a resident "householder" or "freeholder" (whatever these pre-Civil War terms mean or were ever perceived to mean) for the last preceding six months, pursuant to § 12-16-150(1).
>
> . . . The "not a relevant avenue of inquiry" reason given by the trial court cannot withstand appellate review unless we hold forthrightly that the trial court had the right to

> totally ignore the "householder or freeholder" qualification. Indeed, this, in legal effect, is exactly what the trial court necessarily did in disallowing the question. It seems altogether too obvious on its face to warrant discussion that § 12-16-150(1) cannot meet constitutional muster. For this reason, I would affirm and make it abundantly clear that this antiquated ground for challenge of a juror must be struck down as repugnant to our federal and state constitutions.

481 So. 2d at (Jones, concurring). Most recently the Alabama Supreme Court decided *Babcooke v. Duncan,* 20 ABR 1671 (1986), wherein it was held that a member of a suspect classification (an alien) could not be denied a commission as a notary public absent a showing of a compelling state interest for the denial. The reasoning of the Supreme Court of Alabama was based upon *Bernal v. Fainter,* 467 U.S. 216 (1984) whereby it was held that a statute of the State of Texas requiring notaries public to be citizens of the United States was violative the Equal Protection Clause of the 14th Amendment.

In *Turner v. Fouche,* 396 U.S. 346 (1970), this Court had before it a similar question. An attack was made in *Turner,* id., on a requirement of a statute of the State of Georgia that a person be a freeholder in order to qualify for appointment to a local school board. No compelling state interest was shown by the State of Georgia for this qualification. This court opined that the freeholder requirement was invalid even when measured by the traditional test of denial of equal protection. 396 U.S. at 362. The conclusion reached by this Court was that the freeholder requirement amounted to invidious racial discrimination:

> Without excluding the possibility that other circumstances might present themselves in which a property qualification for office-holding could survive constitutional scrutiny, we cannot say, on the record before us, that the present freeholder requirement for membership on the county board of education amounts to anything more than invidious discrimination.

396 U.S. at 363.

The Court of Civil Appeals of Alabama incorrectly applied a test of legislative deference in determining the validity of the enabling legislation in question. It was held that a rational basis existed for the "freeholder" qualification.

A classification based upon race is subject to a strict scrutiny test. *Korematsu v. United States,* 323 U.S. 214 (1944). Under the tests of *Korematsu,* id., and *Turner v. Fouche, supra,* any property qualification for office holding is valid only if a compelling state interest is shown for the qualification. In the instant case, there has been no showing of a compelling state interest. Thus, the classification established by the state enabling legislation cannot withstand constitutional muster.

Petitioners are requesting this Court to reverse the decisions of the courts below, holding the enabling legislation creating the Shelby County Commission invalid. The freeholder qualification contained in the enabling legislation is facially invalid in that its very purpose is to disqualify potential minority appointees to the Shelby County Planning Commission.

CONCLUSION

For the foregoing reasons, the Petition for Writ of Certiorari to the Supreme Court of Alabama should be granted, and the decisions below reversed.

Respectfully submitted,

Douglas Corretti
(Counsel of Record)
CORRETTI & NEWSOM
1804 7th Avenue North
Birmingham, AL 35203
(205) 251-1164

Attorneys for Petitioners

APPENDICES

APPENDIX A

THE STATE OF ALABAMA –
JUDICIAL DEPARTMENT
THE SUPREME COURT OF ALABAMA
OCTOBER TERM, 1985-86

Ex parte: Jim B. McClendon and
Nancy P. McClendon

PETITION FOR WRIT OF CERTIORARI TO
THE COURT OF CIVIL APPEALS

(In re: Jim B. McClendon
and Nancy P. McClendon
v.
Shelby County, et. al)

PER CURIAM:

The petition for writ of certiorari is denied.

In denying the petition for writ of certiorari, this Court does not wish to be understood as approving all the language, reasons, or statements of law in the Court of Civil Appeals' opinion. *Horsley v. Horsley,* 291 Ala. 782, 280 So. 2d 155 (1973).

WRIT DENIED.

Torbert, C. J., Faulkner, Almon, Beatty and Houston, JJ., concur.

APPENDIX B

JIM B. McCLENDON, et al,	*	IN THE CIRCUIT
	*	COURT FOR
Plaintiffs,	*	SHELBY COUNTY,
	*	ALABAMA
vs	*	
	*	CIVIL ACTION
SHELBY COUNTY, et al,	*	NUMBER
	*	CV-83-066
Defendant.	*	

JUDGMENT

I. The court has previously ruled on the "cul-de-sac" question in the judgment of June 20, 1984, but will now add the following comments on that issue.

Much of the plaintiffs' testimony was simply in conflict with what appeared in black and white on the said record map. Moreover, at the end of the actual turnaround there is no house standing in the way of the connection. Again, the court finds that this configuration is not a "cul-de-sac" in the sense contended by the plaintiffs, with the resulting legal effects as contended by the plaintiffs.

II. The judgment of June 20, 1984 set aside and held for nothing the Shelby County Planning Commission vote that had been appealed to this court. That judgment also stated that the McClendons could re-submit to the Shelby County Planning Commission their request that the Commission prohibit the proposed connection.

The plaintiffs chose to and did re-petition the Commission. The Shelby County Planning Commission – appointed and operating under Amended Act No. 82-693 and therefore as a different legal entity – denied the request. The Shelby County Planning Commission then filed its transcript of this July 17, 1984 Commission hearing. The plaintiffs then requested the

court to enter a final judgment. This request was made pursuant to plaintiffs' written "Motion to Enter Final Judgment and Tax Costs", and pursuant to an in camera conference the court held with the attorneys representing all parties in this action, at which conference plaintiffs' attorney again repeated the plaintiffs' desire that this court immediately enter a final judgment.

There was never, however, an evidentiary hearing on the Shelby County Planning Commission's decision which is actually before this court. It could then — and might be — argued that the plaintiffs have presented no evidence in support of their allegation that the Commission's decision to reject the plaintiffs' application was arbitrary, capricious, unlawful, etc.

Be that as it may, this court does not find — based upon the evidence presented, and based upon the court's two in-person visits to the two subdivisions in question, which visits included on-the-spot evaluation of the benefits to the community of the proposed connection as testified to at the previous evidentiary hearings, such as providing a straight line connection of the two subdivisions — that the action denying the request to prevent the connection was arbitrary, capricious, or unlawful.

III. Plaintiffs attempt also to raise the question of the constitutionality of Amended Act No. 82-693.

The Shelby County Planning Commission, which approved the record map in question and whose minutes of June 19, 1979, explicitedly [sic] approved the connection was declared unconstitutional by the Alabama Supreme Court on May 14, 1982, which ruling was final on June 29, 1982. (Plaintiffs' counsel in his letter to the Court of August 22, 1984, stated that the actions of the original Commission were therefore void.) Act No. 82-693 was subsequently passed, and it was the Shelby County Planning Commission which existed pursuant to this act — unamended — which initially denied the plaintiffs' request, and whose vote this court set aside in the judgment of June 20, 1984.

The present Shelby County Planning Commission, operating under and existing pursuant to Amended Act No. 82-693, did not give permission for this connection. Its ruling left matters in exactly the same legal state as they existed prior to the time the McClendons petitioned the present Shelby County Planning Commission.

The McClendons asked the Commission to prevent the connection. The Commission, however, refused to grant the McClendons' request. The effect of that refusal to take action simply maintained the status quo, whatever that is. (That issue was not raised.)

For the McClendons to assert, after the Commission refused their request to intervene, refused to change whatever status quo existed at the time this Commission came into being, that the Commission is unconstitutional is inconsistent. The effect of the constitutional challenge means that the plaintiffs asked the Commission to do something for them, and, when the Commission did not, they say that the Commission had no authority to do it anyway.

In this court's opinion, the McClendons should be estopped from asserting the unconstitutionality of Amended Act #82-693 in this proceeding. Such a challenge is self-contradictory, inconsistent, and without purpose. See also *Byrd Companies, Inc. v. Jefferson County,* 445 So. 2d 239 (1983). (The court communicated and discussed with the attorneys the question of estoppel.)

IV. The court has considered all of the issues raised by the plaintiffs as stated in the plaintiffs' brief of June 12, 1984, which brief was filed pursuant to the court's specific request to the plaintiffs to specify the issues they desired the court to rule on. The court finds and rules against the plaintiffs on the rest of the issues they presented to the court.

Wherefore, judgment is hereby entered in favor of the defendants and against the plaintiffs.

Costs are taxed to the plaintiffs.

DONE and ORDERED this 6 day of September, 1984.

/s/ ROBERT R. ARMSTRONG, JR.

Robert R. Armstrong, Jr.
Circuit Judge

Filed in office this the 6 day of September, 1984.

/s/ KYLE LANSFORD

Kyle Lansford
Clerk of Circuit Court
Shelby County, Alabama

APPENDIX C

THE STATE OF ALABAMA –
JUDICIAL DEPARTMENT
THE COURT OF CIVIL APPEALS
SPECIAL TERM 1985

Civ. 4872

Jim B. McClendon and Nancy P. McClendon
v.
Shelby County, et al.

Appealed From Shelby County Circuit Court

WRIGHT, Presiding Judge

In January 1982 the McClendons contracted to buy Lot 8 in the Meadow Brook, 6th Sector Subdivision, paying earnest money of $10,000. They had visited the site several times prior to signing the contract. The street in front of the lot appeared to be a cul-de-sac with curbs and gutters in place. In March 1982, before the closing of the sale, the McClendons were informed that the Shelby County Planning Commission (SCPC) had authorized extending the street in front of their property to connect with a neighboring subdivision. The McClendons examined the record map of the area during this time and talked to one of the planning commissioners, who confirmed the extension of the street. In spite of this knowledge, the McClendons closed the sale of the property on April 30, 1982.

The McClendons then petitioned the SCPC to contest this extension. The petition asked the SCPC to "change the plans" that it had previously approved, which called for the extension. Having previously authorized the extension in an entirely separate action, it was understandably unsure of the proper way in which to address this petition. The SCPC ultimately decided to treat the petition as a request "for approval to vacate a 60-foot right-of-way behind [the alleged] cul-de-sac circle at North End of Colonial Park Road to block future connecting

road with Broken Bow Subdivision." We can find no objection in the record to the SCPC's characterization of this petition. In fact, one might say that this characterization was virtually ignored by the McClendons. The petition was denied.

An appeal was taken to the Shelby County Circuit Court. The circuit court found that one of the commissioners had acted improperly. The court set aside the SCPC's decision and allowed the McClendons to repetition the SCPC. The petition was again denied. A second appeal was taken to the circuit court, and this time the SCPC's decision was upheld. On appeal to this court, the McClendons make a number of arguments, most of which, it seems, would have more properly been made and addressed in a declaratory judgment action or perhaps even an independent action to contest the constitutionality of the act by which the SCPC was created. However, in acknowledgement of the time and energy expended on this case, by both the attorneys and the judiciary, we will address most of these arguments.

The McClendons' first and main contention is that the street in front of their property is a cul-de-sac as a matter of law. This contention, if correct, would arguably make the SCPC's decision wrong as a matter of law in that its characterization of the petition as a request "for approval to vacate" would be inaccurate. In essence, the argument is that approval of the connecting street would constitute an illegal taking of the McClendon's property without just and fair compensation. We, however, cannot agree with the McClendons' contention. The SCPC's characterization of both the street and the petition was correct. A diagram of the area will facilitate an understanding of this case.

[SEE EXHIBIT A ATTACHED]

We find substantial evidence in the record to support the proposition that the street in question is not a cul-de-sac. The subdivision regulations state clearly that a cul-de-sac is a *circle* with certain specified dimensions. The diagram clearly shows

that Colonial Park Road dead-ends at the boundary of the subdivision. There is no circle, but only an area to facilitate the turn around of automobiles or emergency vehicles as provided for by these same subdivision regulations. Moreover, there exists an actual cul-de-sac in the very same subdivision. The following diagram shows this to be a fully-closed circle surrounded by wedge-shaped lots.

[SEE EXHIBIT B ATTACHED]

Once a plat or map is recorded in the office of the probate court in the county where the land lies, the streets, avenues and highways are held to be dedicated to the public. § 35-2-51, Code of Alabama 1975. *See Talley v. Wallace,* 252 Ala. 96, 39 So. 2d 672 (1949). Once an area is dedicated, the parties who purchase surrounding lots are put on notice of such dedication. *Hoiles v. Taylor,* 278 Ala. 515, 179 So. 2d 148 (1965). Thus, in the present case, the entire street in question was dedicated to the public. This dedication included the entire area up to the actual boundary of the subdivision. As this map was recorded well before the McClendons purchased their property, they were put on notice of such dedication. Because of this, logically, the SCPC was correct in its characterization of the McClendons' petition as a request for *approval* to vacate. The SCPC does not have the power to actually vacate a public street. *See* §§ 23-4-1 to -20, Code of Alabama 1975.

We note that local governing authorities are presumed to have a superior opportunity to know and consider the general welfare of the area. *See Episcopal Foundation v. Williams,* 281 Ala. 363, 202 So. 2d 726 (1967); *Sanders v. Board of Adjustment,* 445 So. 2d 909 (Ala. Civ. App. 1983). The question becomes whether the decision of the planning commission, denying the McClendons' request, was arbitrary and capricious in that it was unrelated to the public health, safety, morals or general welfare. *City of Mobile v. Waldon,* 429 So. 2d 945 (Ala. 1983). The trial court held that the decision was not arbitrary and capricious. If supported by evidence, this decree

is favored with a presumption of correctness and is not to be disturbed, unless it is plainly or palpably wrong or manifestly unjust. *Hall v. Jefferson County,* 450 So. 2d 792 (Ala. 1984). Our standard of review, once a substantial relationship to the promotion of public health, safety or general welfare has been determined, is whether the SCPC's denial is found upon "fairly debatable" factual and policy issues. *See Hall v. Jefferson County, supra.*

We find ample evidence in the record before us to show that the decision had a substantial and obvious relation to the public health, safety, and general welfare of those persons in Shelby County. We also find that the decision was founded upon "fairly debatable" factual and policy issues. Testimony by witnesses, including that of experts, showed that the connecting road would improve fire and police protection, facilitate utility connection, reduce commuting time for residents and improve safety in the event of catastrophic fire or storm. Thus, the decision of the SCPC not to approve the McClendons' request was not arbitrary and capricious. The decision of the trial court was not plainly and palpably wrong and must be affirmed.

Incidentally, we note that any contention that the SCPC's decision at the first hearing was arbitrary and capricious would now be moot. Any error made in the first hearing has been cured by the second hearing and subsequent appeals.

Our decision that Colonial Park Road does not end in a cul-de-sac obviates the need to address the McClendons' argument concerning estoppel, the vested rights doctrine and 42 U.S.C. §§ 1983, 1988. As the property had already been properly dedicated to the public, there has been no deprivation or detriment to consider.

The McClendons attempt to make a number of arguments concerning the constitutionality of 1982 Ala. Acts 693, as amended by 1984 Ala. Acts 454. This act created the SCPC.

Counsel for the SCPC strongly argues, and we think correctly, that the rationale of the supreme court's decision in *Byrd Companies, Inc. v. Jefferson County,* 445 So. 2d 239 (Ala.

1983) should prevent the McClendons from requesting approval from the SCPC while at the same time and in the same action contesting the constitutionality of the act establishing such commission's authority. We note, however, without condoning the McClendons' methods as proper, that such a decision might cause an unnecessary waste of both judicial and attorney time and expense. As did the supreme court in *Byrd* then, we address the McClendons' main contentions.

The McClendons first argue that the act constitutes an unlawful delegation of legislative and judicial powers. Particularly, it is argued that section 14 of the act violates the doctrine of separation of powers.

A very good argument can be made that the McClendons have not established the necessary standing to contest the constitutionality of the act in question. There has been no argument made that would even suggest any "causal connection" between the injury they allege and the unconstitutionality of the act. Thus, there has been no showing that the McClendons would benefit personally from the court's intervention. *See Warth v. Seldin,* 422 U.S. 490, 508 (1975). In other words, we fail to see how striking section 14 of the act as unconstitutional will benefit the McClendons in any way. The street in question would still not be a cul-de-sac, and the McClendons will still not have complied with §§ 23-4-1 to -20, Code 1975.

We note, however, that the McClendons' argument must still fail on the merits. Only three powers are granted the SCPC by section 14. Two of these deal with special exceptions and variances, powers which have long been recognized as validly delegable. *See generally* Ala. Digest, *Zoning and Planning,* Key No. 484 (Supp. 1985), 101A C.J.S. *Zoning and Land Planning* §§ 228-29 (1979). The third, stated as the power "to hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by the Commission or official in the enforcement of this article or any regulation adopted pursuant thereto" is merely providing the SCPC with the power to reconsider its own decisions. It is generally recognized that an administrative agency has the power

to do this as long as the legislature has granted such authority. *See generally* 73A C.J.S. *Public Administrative Law and Procedure* § 161 (1983). Further the legislature of a state may delegate to an administrative body the power to make rules and decide particular cases. *State ex rel Dyer v. Sims,* 341 U.S. 22 (1951). This includes the power to delegate adjudicatory or quasi-judicial duties. *Ex parte Darnell,* 262 Ala. 71, 76 So. 2d 770 (1954). As noted in 73A C.J.S. *Public Administrative Law and Procedure* § 161 (1983):

> "Legislative acts granting to an administrative agency quasi-judicial power are valid, where the legislature has laid down the policy and established the standards while leaving to the agency the determination of facts to which the legislative policy is to apply.

See also Ball v. Jones, 272 Ala. 305, 132 So. 2d 120 (1960). *See generally* 73A C.J.S. *Public Administrative Law and Procedure* § 10b (1983). There has been no issue raised as to the validity, or lack thereof, of a clear standard to apply under section 14.

The McClendons also contend that the selection process for commissioners provided for by the act unlawfully discriminates in that it limits selection to resident "freeholders" of Shelby County. We cannot agree.

The basic tenet of the equal protection clause is that all persons similarly situated must be treated equally. *Eagerton v. Gulas Wrestling Enterprises, Inc.,* 406 So. 2d 366 (Ala. 1981). It does not, however, require that a statute necessarily apply equally to all persons or require that things different in fact be treated in law as though they were the same. *Hall v. McBride,* 416 So. 2d 986 (Ala. 1982). *Eagerton v. Gulas Wrestling Enterprises, Inc., supra.*

We note that there has been no argument that either a fundamental right or a suspect classification is involved in the present case. Thus, the only question is whether the classification bears a rational relation to a legitimate state interest. *Board of Trustees of Policemen's and Fireman's Retirement*

Fund v. Cardwell, 400 So. 2d 402 (Ala. 1981); *Madison v. Lambert,* 399 So. 2d 840 (Ala. 1981). *See also Pappanastos v. Board of Trustees of University of Alabama,* 615 F. 2d 219 (5th Cir. 1980).

The McClendons argue that the classification in the present case is irrational, because in two hypothetical situations such a classification does not make logical sense. We must simply ask whether "any state of facts reasonably may be conceived to justify the challenged qualification. *McGowan v. Maryland,* 366 U.S. 420 (1961). *Accord Salyer Land Co. v. Tulare Lake Basin Water Storage District,* 410 U.S. 719 (1973); *Pappanastos, supra.* Thus, if it can be reasonably concluded that the "freeholder" qualification promotes a legitimate state interest. it must be sustained. *See Exxon Corp. v. Eagerton,* 462 U.S. 176, *on remand Eagerton v. Exchange Oil and Gas Corp.,* 440 So. 2d 1031 (Ala. 1983). A similar test would be applied to any challenge based on a denial of due process. *See Jones v. Alabama State Docks,* 443 So. 2d 902 (Ala. 1983); *Juneman Electric, Inc. v. Cross,* 414 So. 2d 108 (Ala. Civ. App. 1982).

We cannot say that it is irrational for the legislature to conclude that, for the most part, those persons having the greatest interest in landplanning in Shelby County, i.e., freeholders, should not also be the persons best qualified to make landplanning decisions. In fact, it is quite logical for the legislature to make such a conclusion. The rationale for such a conclusion is similar to that used in establishing the aforementioned presumption that local governing bodies have a superior opportunity to know and consider the interests involved and to consider the general welfare of the area involved. *Cf. Sanders v. Board of Adjustment, supra.* We, therefore, uphold the act.

In view of our decision on the first issue, and the fact that it was not discussed in brief by either party, we discern no reason to determine if § 6-6-227, Code of Alabama 1975, applies in this case as in the recent cases of *Barger v. Barger,* 410 So. 2d 17 (Ala. 1982) and *Guy v. Southwest Alabama Council on*

Alcoholism, [Ms. August 21, 1985] ____ So. 2d ____ (Ala. Civ. App. 1985).

In light of the foregoing, we are of the opinion that the trial court's decision that the SCPC has not acted arbitrarily or capriciously in denying the McClendons' petition was correct. Further, there is no sound challenge that can be made to the constitutionality of Act No. 82-693, as amended by Act No. 84-454. We are therefore of the opinion that the trial court's decision is due to be affirmed.

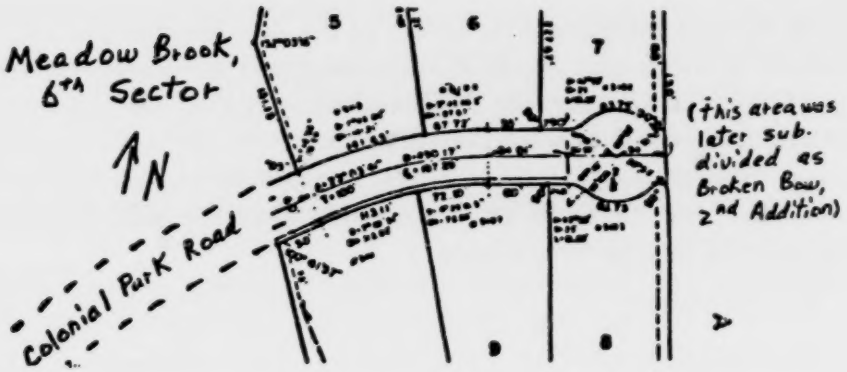
AFFIRMED

HOLMES, J., concurs; BRADLEY, J., concurs specially

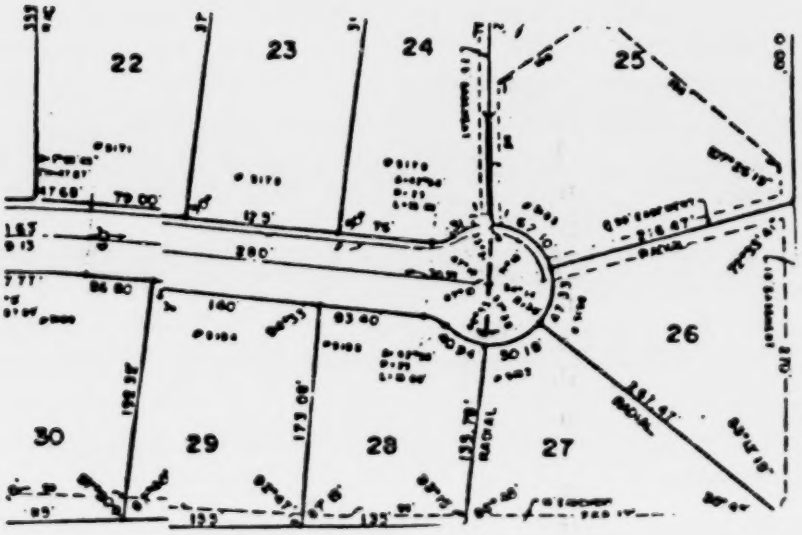
BRADLEY, J., concurring specially:

I agree with the majority that the first issue decided, i.e. that the street in front of the McClendons' property is not a cul-de-sac as a matter of law, is dispositive of the appeal. Consequently, I see no need to consider the constitutional issues presented or whether they were properly presented to the trial court. *See Guy v. Southwest Alabama Council on Alcoholism, et. al.,* [Ms. August 21, 1985] ____ So. 2d ____ (Ala. Civ. App. 1985). Hence, I do not agree or disagree with the decision in this aspect of the case.

APPENDIX C – EXHIBIT A



APPENDIX C – EXHIBIT B



APPENDIX D

Amendment 14 to the United States Constitution provides:

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

1982 Ala. Acts No. 693 provides in pertinent part:

Section 2. Personnel of the Shelby County Planning Commission. The Commission shall be composed of seven members, all of whom shall be over the age of 25 years and each of whom shall be a qualified elector in and an actual resident of and a free-holder in Shelby County who resides outside the corporate limits of any municipality therein. Two of the members shall be appointed by the Shelby County Commission, two shall be appointed by the Shelby County Board of Education, two shall be appointed by the Shelby County Bar Association, and one shall be appointed by the Judge of the Circuit Court of Shelby County. Not over two members of the Commission shall come from any one beat of the County. Each member shall serve a term of six years and until his successor is duly appointed and qualified. Prior to taking office each member shall subscribe to an oath as provided by law for public officials and the same shall be recorded in the Probate Office of Shelby County. The original members of this Commission shall draw lots to determine the period of time each is to serve and the terms of two shall expire two years from the date of the organization of the Commission, the terms of two shall expire four years from the date of the organization of the Commission and the terms of three shall expire six years from the date of the organization of the Commission. In the event of a vacancy on

the Commission the same shall be filled as in the case of the original appointment. All members shall serve without compensation, and the members shall hold no other county office. However, reasonable and necessary expenses of the members shall be paid from the General Fund of Shelby County.

1984 Ala. Acts No. 454 provides in pertinent part:

Section 2. Personnel of the Shelby County Planning Commission. The commission shall be composed of seven members, all of whom shall be over the age of 25 years and each of whom shall be a qualified elector in and an actual resident of and a free-holder in Shelby County who resides outside the corporate limits of any municipality therein. All members shall be appointed by the Shelby County Commission, and shall serve at the pleasure of Shelby County Commission. Not over two members of the commission shall come from any one beat of the County. Each member shall serve a term of six years and until his successor is duly appointed and qualified. Prior to taking office each member shall subscribe to an oath as provided by law for public officials and the same shall be recorded in the office of the Judge of Probate of Shelby County. The original members of this commission shall draw lots to determine the period of time each is to serve and the terms of two shall expire two years from the date of the organization of the commission; the terms of two others shall expire four years from the date of the organization of the commission; and the terms of three others shall expire six years from the date of the organization of the commission. In the event of a vacancy on the commission the same shall be filled as in the case of the original appointment. All members shall be reimbursed reasonable and necessary expenses incurred and shall be paid not less than fifty dollars per month as set by the county commission. Members shall hold no other county office and members shall be paid from the General Fund of Shelby County.

1965 Ala. Acts No. 816 provides in pertinent part:

Section 2. Personnel of the Shelby County Planning Commission. The Commission shall be composed of seven members, all of whom shall be over the age of 25 years and each of whom shall be a qualified elector in and an actual resident of and a free-holder in Shelby County who resides outside the corporate limits of any municipality eherein. Two of the members shall be appointed by the Board of Revenue and Control of Shelby County, two shall be appointed by the Shelby County Board of Education, two shall be appointed by the Shelby County Bar Association, and one shall be appointed by the Judge of the Circuit Court of Shelby County. Not over two members of the Commission shall come from any one beat of the County. Each member shall serve a term of six years and until his successor is duly appointed and qualified. Prior to taking office each member shall subscribe to an oath as provided by law for public officials and the same shall be recorded in the Probate Office of Shelby County. The original members of this Commission shall draw lots to determine the period of time each is to serve and the terms of two shall expire two years from the date of the organization of the Commission, the terms of two shall expire four years from the date of the organization of the Commission and the terms of three shall expire six years from the date of the organization of the Commission. In the event of a vacancy on the Commission the same shall be filled as in the case of the original appointment. All members shall serve without compensation, and the members shall hold no other county office. However, reasonable and necessary expenses of the members shall be paid from the General Fund of Shelby County.